

REMARKS

Upon entry of the present amendment, claims 2, 7-26, 29-34, 36, 38, 39, 44-56, 59, 60, and 105-124 will be pending.

Claims 2, 10-13, 17-19, 29-33, 38-39, 49, 59, 105, 112, and 114-115 have been amended.

Rejections under 35 USC § 112, second paragraph:

Claims 2, 7-26, 29-34, 36, 38, 39, 44-56, 59, 60, and 105-124 have been rejected under 35 U.S.C. § 112, Second Paragraph as allegedly being indefinite. Applicants traverse these rejections.

Claims 2, 29, and 105 no longer recite “substantially all.” While Applicants continue to believe that this term is not indefinite, the claims have been amended solely in an attempt to advance prosecution.

Claims 15, 17, 29-33, 36, 38-39, 49, and 113-115 no longer recite “lactic acid-based polymer.” While Applicants continue to believe that this term is not indefinite, the claims have been amended solely in an attempt to advance prosecution.

For these reasons, Applicants request withdrawal of the rejections under 35 U.S.C. § 112, Second Paragraph.

REJECTIONS UNDER 35 U.S.C. § 103:

Claims 2, 7-23, 29-34, 36, 38, 39, 44, 45, 47-56, 59, 60, and 105-121 have been rejected for alleged obviousness over WO 02/238185 to Dunn et al. (“Dunn”), and over Dunn in view of

US Patent 6,130,200 to Brodbeck et al. ("Brodbeck"). Applicants traverse these rejections.

Dunn teaches solutions of polymers and solvent. See Dunn at 14, lines 2-4..

Brodbeck teaches gels of polymers and solvent, as noted in the OA at 5.

It would be impossible to control the initial burst of a dosage form taught by Dunn by increasing the viscosity of a gel, because **there is no gel taught in Dunn**. The two references teach two entirely different delivery systems (solutions versus gels) which cannot be usefully combined. In essence, the combination of references results in an inoperative invention. Therefore, there is no motivation to combine the references in the manner set forth by the Office.

There is insufficient motivation to combine Dunn and Brodbeck. Absent motivation to combine the Office has failed to establish a prima facie case of obviousness. Accordingly, Applicants request the withdrawal of the rejection over Dunn in view of Brodbeck.

As for any rejections of the claims over Dunn, without consideration of Brodbeck, applicants point out that independent claims 2, 29, 59, and 105 **all** require gels. Again, gels are not taught by Dunn. Therefore, the Office has not shown that all of the claim limitations have been taught or suggested by the prior art. Such a showing is a requirement of a prima facie case of obviousness. Absent such a showing, there is no prima facie case of obviousness, and therefore Applicants request the withdrawal of any rejections over Dunn by itself.

CONCLUSION

In light of the above amendments and remarks, Applicants submit that the present application is fully in condition for allowance, and request that the Examiner withdraw the outstanding rejections. Early notice to that effect is earnestly solicited.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact Applicants' Attorney at (408) 777-4914.

Respectfully submitted,

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